

IN THE HIGH COURT OF ORISSA AT CUTTACK

MACA No.785 of 2020 & MACA No.126 of 2021

MACA No.785 of 2020

*M/s.New India Assurance Company
Limited*

.... *Appellant*
Mr.G.P.Dutta, Advocate

-versus-

Rutunjay Das and another *Respondents*
Ms.Agnisikha Ray, Advocate for Respondent No.1

MACA No.126 of 2021

Rutunjay Das

.... *Appellant*
Ms.Agnisikha Ray, Advocate

-versus-

*M/s.Kalinga Trade and Travel and
another*

.... *Respondents*
Mr.G.P.Dutta, Advocate for Respondent No.2

**CORAM:
JUSTICE B. P. ROUTRAY**

**ORDER
27.7.2023**

**Order No.
07.**

1. The matter is taken up through Hybrid mode.

2. Heard Mr.Dutta, learned counsel for the Insurer and Ms. Ray, learned counsel for the claimant. Ms. Ray submits that the required Court fee has already been deposited today morning.

3. Both the appeals arise out of the same judgment dated 29th September 2020 passed by the learned 2nd M.A.C.T., Cuttack, in Misc. Case No.810 of 2005, wherein compensation to tune of Rs.29,190/- along with interest @7% per annum has been granted from the date of filing of the claim application on account of injury sustained by the claimant in the motor vehicular accident dated 19th June 2005.

4. MACA No.126 of 2021 has been filed by the claimant for enhancement of the compensation amount and MACA No.785 of 2020 has been filed by the Insurer challenging the award.

5. Mr.Dutta submits that sustenance of injury by the claimant in the accident dated 19th June 2005 is doubtful and neither any injury report was prepared by the police nor any substantial material could be produced to justify the same.

6. On the other hand, the claimant has prayed for enhancement of the compensation amount due to disfigurement and mental trauma. It is also submitted that the injured-claimant has undergone plastic surgery and skin grafting at a later period of his treatment in Aswini Hospital, Cuttack.

7. The doubts raised by the Insurer with regard to sustenance of injuries by the claimant in the accident is seen unfounded on the face of Ext.5 – the discharge certificate along with bed head ticket, a copy of which is produced in course of

hearing. Learned Tribunal has also observed that Ext.5 is ample clear to suggest that the claimant sustained such injuries in the accident. Therefore, the contentions put forth on behalf of the Insurer to doubt sustenance of injury by the claimant in the accident is rejected.

8. So far as the contentions of the claimant are concerned to enhance the compensation amount, the treatment papers in Aswini Hospital as produced by the claimant are seen manipulated and in this regard the claimant has admitted in his cross-examination that as per discharge summary dated 29th July 2006 of Aswini Hospital the accident took place in August 2005 and there are overwriting in the same. Therefore, the plea taken by the claimant regarding skin grafting and plastic surgery is not substantiated through materials. Moreover, the nature of injuries as described in the discharge certificate under Ext.5 only suggests injury on the nostril. So in absence of any material to suggest alleged disfigurement, this Court is not inclined to accept the contentions for enhancement of the compensation amount and the amount so determined by the Tribunal is confirmed.

9. In the result, both the appeals are dismissed and the Insurer i.e. M/s. New India Assurance Company Limited is directed to deposit the entire compensation amount along with interest from the date of filing of the claim application within a period of two months from today; where-after the same shall be disbursed in favour of claimant on such terms and proportion to be decided by the Tribunal.

10. Copies of evidence and Ext.5 produced in course of hearing are kept on record.

11. The statutory deposit made by the Appellant in MACA No.785 of 2020 along with accrued interest thereon be refunded to him on proper application and on production of proof of deposit of the award amount before the learned Tribunal.

12. Urgent certified copy of this order be granted on proper application.

(B.P. Routray)
Judge

C.R.Biswal

